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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARYBefore the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )

Amendment of Section 73.202 )

FM Table of Allotments )

(Lexington, Henry and Parker's )  
Crossroads, Tennessee) )

MM Docket No. 95-122

RM-8668

RM-8712

RM-8713

To: Chief, Policy and Rules Division

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FURTHER REPLY COMMENTS

Richard Bennett ("Bennett") by his undersigned counsel herewith submits his Further Reply Comments in the above referenced proceeding in response to the Commission's Public Notice Report No. 2105, released October 18, 1995, as follows:

1. In response to the Notice of Proposed Rulemaking (DA 95-1605), released July 26, 1995, Floriplex, Inc. filed Reply Comments on October 3, 1995, in which it contended that the Counterproposal filed by Bennett, proposing the allotment of Channel 243A to Henry, Tennessee, should be dismissed. Alternatively, Floriplex, Inc. contended that Channel 284A should be allotted to Henry, in lieu of Channel 243A. As demonstrated herein, there exists no basis for dismissing the Counterproposal and Channel 284A is not available for allotment at Henry, Tennessee.

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2. While Floriplex, Inc. contends that Bennett's Counterproposal should be dismissed, it offers no justification

for such disposition nor does there exist any justification. Bennett's Counterproposal was timely filed in full compliance with the procedural and substantive requirements of the Rules and may not lawfully be dismissed.

3. Floriplex, Inc. next contends (at p. 2) that Henry is not a "sufficiently sizeable, distinct place" to warrant the allotment requested. However, as demonstrated in Bennett's Counterproposal, filed September 18, 1995, Henry is listed in the Census, is incorporated and has a mayor/board of aldermen form of government, has its own post office and zip code and provides essential services to its citizens. While Lexington may have a larger population than that of Henry, pursuant to the Commission's long established allocation criteria, population is considered under the fourth and least significant, "Other" category. See: Revision of FM Assignment Policies and Procedures, 90 FCC2d 88 (1982). Thus, inasmuch as a first local service is proposed to Henry, the proposal to allot a third local service to Lexington could not prevail, as a matter of law, regardless of how populous Lexington might be.

4. Floriplex, Inc. contends (at p. 2) that any station licensed to Henry would be "heavily dependent" upon revenues from larger nearby communities. This is irrelevant. The Commission does not consider the availability of revenues in the allotment process and, even if it did, Floriplex, Inc. has not demonstrated that insufficient revenues exist in the proposed station's service area to render it economically nonviable. While Floriplex, Inc.

suggests that the Commission treat the proposed allotment to Henry "as if" it were a proposal to allot an additional service to McKenzie or Paris, Tennessee, "as a matter of law," Floriplex, Inc. has failed to cite any legal precedent for doing so, nor does any exist.

5. While Floriplex, Inc. contends (at p. 4) that Bennett has failed "to specifically list retail or industrial businesses," there existed no requirement that he do so. Floriplex, Inc. does not dispute that Henry is listed in the Census, incorporated with a mayor/board of aldermen form of government, has its own post office and zip code or that it provides essential services to its citizens. Furthermore, Henry's population is equal to or greater than the populations of numerous communities which have previously received FM Channel allotments. Therefore, it must be concluded that Henry is sufficiently substantial and distinct to warrant the allotment of a first local service to Henry.

6. As reflected in Bennett's Reply Comments, filed October 2, 1995, the provision of a first local service to Henry would prevail over the proposal to allot a third local service to Lexington and, inasmuch as Henry enjoys more significant indicia of community identity, as well as a larger population, the proposed allotment of Channel 243A to Henry would outweigh the proposal to allot the same Channel to Parker's Crossroads. Accordingly, Bennett's proposal to allot Channel 243A to Henry, in lieu of either Lexington or Parker's Crossroads, Tennessee,

must preferred.

7. In its Reply Comments Floriplex, Inc. argued that, should the Commission conclude that Henry, Tennessee was deserving of a first local service, an alternate channel should be allotted to Henry in lieu of the Channel 243A allotment requested by Richard Bennett. In that regard, Floriplex, Inc. claimed that Channel 284A is available for allotment at Henry, Tennessee. However, as reflected in the attached Exhibits, Channel 284A is not available for allotment to Henry, Tennessee, inasmuch as the required site restriction, coupled with the need to provide city grade (70 dbu) service and line of sight coverage to Henry, precludes the use of Channel 284A for this purpose.

8. As demonstrated in the attached Engineering Report of Olvie E. Sisk, the area that would theoretically be available for the location of a transmitter site capable of providing city grade service and line of sight coverage to Henry, Tennessee, while complying with the minimum mileage separation requirements (hereafter referred to as the "theoretical available area") is extremely small, consisting of an area approximately 0.8 miles long and only 0.25 miles wide. As further reflected in Exhibit A to the Engineering Report, the theoretical available area is bisected by a railroad, as well as by high voltage power lines.

9. As reflected in the attached Declaration of Richard Bennett, the KWT Railroad has a 50 foot right of way on either side of the railroad in question. Likewise, the Tennessee Valley Authority has a 75 foot right of way on either side of its high

voltage power lines. As further reflected in the attached Declaration of Richard Bennett, both the KWT Railroad and the Tennessee Valley Authority have indicated that they will oppose the construction of any tower capable of falling within their respective rights of way. As further reflected in the attached Declaration of Richard Bennett, at least a 300 foot buffer will have to be observed in the construction of the tower in order to assure adequate clearance to the respective rights of way of the KWT Railroad and the Tennessee Valley Authority. Accordingly, the base of the tower will have to be located 350 feet from the railroad and 375 feet from the high voltage power lines to provide the necessary clearance.

10. Exhibits B and C to the attached Engineering Report reflect the location of these rights of way and the the additional 300 foot buffer that would have to be added to each of the respective rights of way in order to assure adequate clearance to them for a 300 foot tower, demonstrating the significant limitation they impose upon the theoretical available area.

11. As reflected in Exhibit D to the Engineering Report, once both the KWT Railroad and the TVA rights of way and the necessary 300 foot buffers are taken into consideration, the actual area available for location of a transmitter site consists of two extremely small areas, identified as Area A and Area B. Utilizing the scale reflected on Exhibit D to the Engineering Report, the area identified as Area A consists of only

approximately 850,000 square feet, while the area identified as Area B consists of only approximately 745,000 square feet.

12. As further reflected in the attached Declaration of Richard Bennett, a transmitter site located within the area identified as Area A would be between 250 and 584 yards from the nearest road and utility access. Likewise, a transmitter site located within the area identified as Area B would be between 600 to 1,100 yards from the nearest road and utility access. Furthermore, as reflected in the attached Declaration of Richard Bennett, the terrain in question is extremely rough and heavily forested. Therefore, in order to utilize any portion of this limited area it would be necessary to construct a road and install power lines over a distance of anywhere from 250 to 1,100 yards over extremely rough and heavily forested terrain. Furthermore, there is no evidence to support any conclusion that the necessary easements for construction of the needed road and power lines could be readily obtained, if obtained at all.

13. As further reflected in the attached Declaration of Richard Bennett, the area representative of the Tennessee Wildlife Resources Agency has advised that much of the land in the area in question is either owned by or subject to the pulpwood harvest rights of a paper manufacturing company and that past efforts at development in the area have been precluded on this basis. Thus, even if the problems presented by the need to obtain easements, construct a road and install power lines were not prohibitive, it has not been demonstrated that the owners of

the land located within any of the actual available area would be willing or able to authorize the use of their property as a transmitter site.

14. In summary then, Floriplex, Inc. has utterly failed to demonstrate the availability of any land sufficient to serve as a transmitter site in the very limited area that could be utilized, much less that any such site could be developed on any reasonably cost-effective basis, given the distance to both existing roads and utility access, as well as the need to secure the necessary easements. It is well established that an allotment will not be made in the absence of a reasonable assurance that a suitable site area exists from which a station could operate in accordance with the Commission's Rules. See: Creswell, Oregon, 3 FCC Rcd. 4608 (1988), recon. den., 4 FCC Rcd. 7040 (1989), and cases cited, therein. Therefore, given the unavailability of any viable transmitter site, it must be concluded that Channel 284A may not be allotted to Henry, Tennessee.

15. In addition to the unavailability of any viable location in which to construct a transmitter site, as further reflected in the attached Engineering Report and accompanying Exhibits E and F, the provision of the required line of sight coverage and 70 dbu service to 100% of the community of Henry from the proposed reference coordinates would be precluded by terrain shadowing. Furthermore, line of sight coverage and 70 dbu service to 100% of the community would, likewise, be precluded, even were the transmitter site to be located 0.1 kilometer closer to Henry,

which Floriplex, Inc. acknowledges is as close as it may be moved. Accordingly, Channel 284A may not be allotted to Henry, Tennessee. Alfred, New York, 8 FCC Rcd. 8662 (1993); Greenwood, South Carolina, 3 FCC Rcd. 4108 (1988).

16. Therefore, based upon the showings advanced herein, as well as in the Counterproposal and Reply Comments, previously submitted by Richard Bennett, the Commission should conclude that: (a) Henry, Tennessee, is a substantial and distinct community, (b) Channel 284A cannot be allotted to Henry, Tennessee, (c) the proposed allotment of Channel 243A to Henry would provide that community with a first local service and, thus, is to be preferred over the proposed allotment of a third local service to Lexington, Tennessee, (d) Henry has a population almost twice that of Parker's Crossroads and enjoys greater indicia of community identity and, thus the allotment of Channel 243A to Henry outweighs the proposed allotment of the same Channel to Parker's Crossroads, and (e) the public interest would be served through the allotment of Channel 243A to Henry, Tennessee.

WHEREFORE, the Commission should amend Section 73.202 of its Rules by allotting FM Channel 243A to Henry, Tennessee.

Respectfully Submitted,

RICHARD BENNETT

By:   
Timothy K. Brady  
His Attorney

P.O. Box 986  
Brentwood, TN 37027-0986  
(615) 371-9367  
November 2, 1995



DECLARATION

I, Richard Bennett, hereby certify:

1. That the railroad, which bisects the theoretical available area, as reflected in Exhibit A to the Engineering Report of Olvie E. Sisk, is owned by KWT Railroad. That I have spoken with a representative of the KWT Railroad, who advised: (a) that the KWT Railroad has a 50 foot right of way on either side of the railroad and (b) that the KWT Railroad will oppose the construction of any tower capable of falling within its right of way.

2. That the high voltage power lines, which bisect the theoretical available area, as reflected in Exhibit A to the Engineering Report of Olvie E. Sisk, are owned by the Tennessee Valley Authority. That I have spoken with a representative of the Tennessee Valley Authority, who advised: (a) that the Tennessee Valley Authority has a 75 foot right of way on either side of its power lines and (b) that the Tennessee Valley Authority will oppose the construction of any tower capable of falling within its right of way.

3. That at least a 300 foot buffer will have to be observed in the construction of the tower in order to assure adequate clearance to the respective rights of way of the KWT Railroad and the Tennessee Valley Authority. Thus, the base of the tower will have to be located 350 feet from the railroad and 375 feet from the high voltage power lines to provide the necessary buffer.

4. That after eliminating the relevant rights of way and associated buffers, the actual available area, as reflected in Exhibit D to the Engineering Report of Olvie E. Sisk, consists of two very small tracts of land, which are identified as Area A and Area B in Exhibit D.


5. That a transmitter site located within Area A would be from 250 to 584 yards from the nearest road and utility access, while a transmitter site located within Area B would be from 600 to 1,100 yards from the nearest road and utility access. Thus, in order to make use of this limited area it would be necessary to construct a road and install power lines over a distance of 250 to 584 yards in order to utilize any site located within Area A and to construct a road and install power lines over a distance of 600 to 1,100 yards in order to utilize any site located within Area B. Furthermore, as reflected on the face of the Mansfield Quadrangle, utilized as the basis for Exhibits A-D to the Engineering Report of Olvie E. Sisk, the terrain over which such a road and power lines would be required to be constructed is extremely rough and heavily forested, significantly increasing the costs of construction. Furthermore, it is in no manner certain that the necessary easements could be obtained to construct a road and install the power lines through this area.

6. That I have contacted the area representative of the Tennessee Wildlife Resources Agency, who advised that much of the land in the area in question is either owned by or subject to the pulpwood harvest rights of a paper company and that past efforts

at development in the area have been precluded on this basis.

I hereby certify under penalty of perjury that the above statement is true and correct.

Signed and dated this 02 day of November, 1995.

  
Richard E. Bennett

## ENGINEERING REPORT

These Engineering Exhibits have been prepared for Richard Bennett, who is opposing the assignment of Channel 284 to Henry, Tennessee, in lieu of Channel 243-A.

Sisk Engineering, Inc., did a study for Mr. Bennett, to determine how large the area would be where Channel 284 could be utilized.

**Exhibit A** illustrates this area. This area allows for maximum spacing down to .49 kilometers. A large part of this area is not available to any applicant because of a TVA high voltage power line passing through it. This power line requires a minimum clearance of 375 feet on both sides of the power line. In addition, another part of this site is taken up by the KWT Railroad. They insist on a maximum clearance of 350 feet on both sides of their tracks.

**Exhibit B** illustrates how much of the site is taken up by the TVA high voltage power line.

**Exhibit C** illustrates how much of the site is taken up by the KWT Railroad.

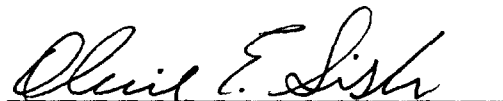
**Exhibit D** illustrates how much of the site is taken up by the TVA High voltage power line and the KWT Railroad.

The amount of area left for the proposed site is 16 square kilometers. As depicted in **Exhibit D**, area A contains 7 square kilometers, and area B contains 9 square kilometers.

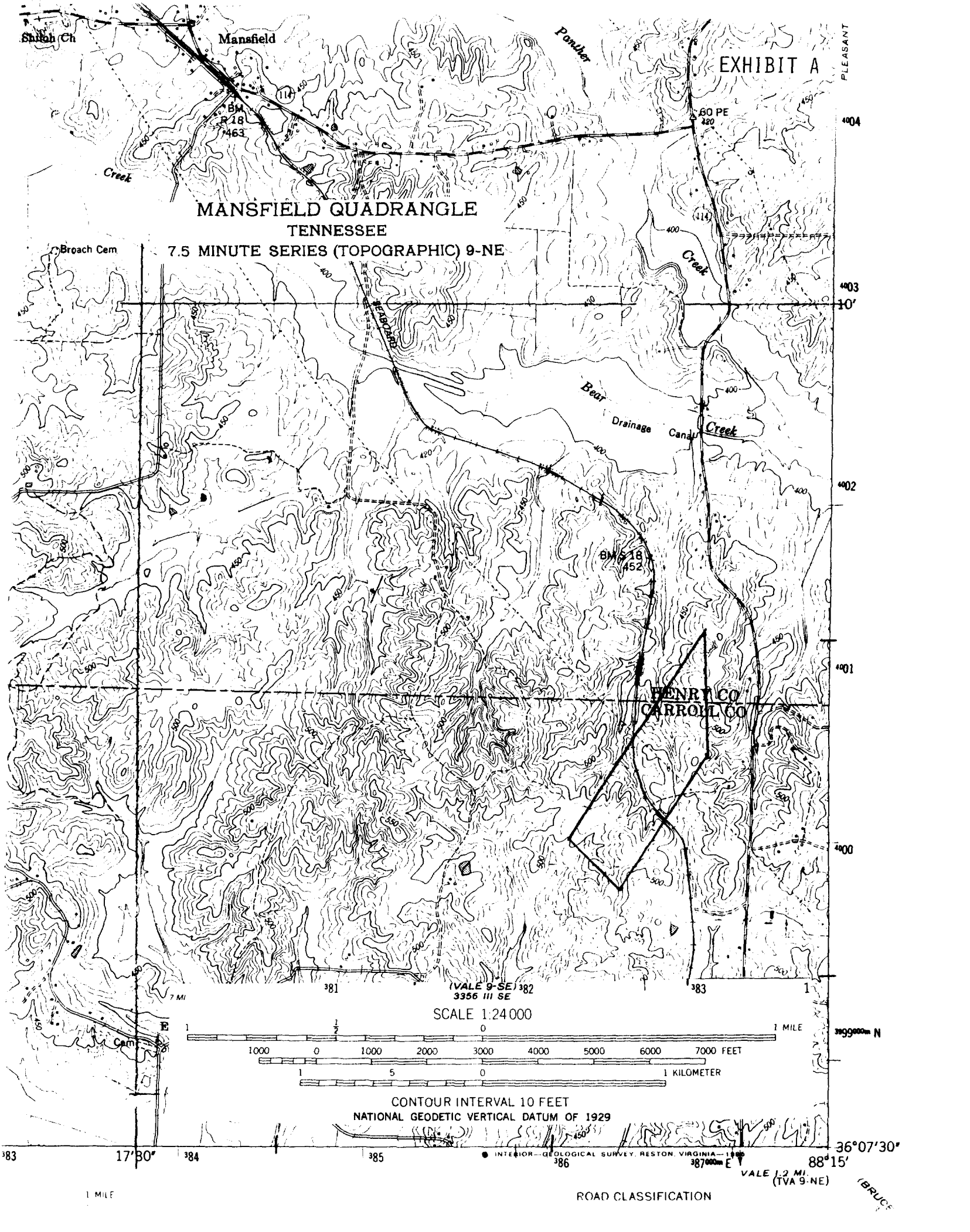
To determine if the proposed station could serve Henry, Tennessee, a study was made to determine if a city grade contour would be delivered over the city of Henry. **Exhibit E** illustrates beyond any doubt that the site is unworkable as it will not come close to putting a city grade contour over Henry, Tennessee.

**Exhibit F** is a computer generated map which highlights the shadowing problems created by the site restrictions. These terrain shadowing problems are illustrated on **Exhibit E and F**, and show that the site area is unworkable for assigning Channel 284 to Henry, Tennessee.

This engineering report was prepared by Olvie E. Sisk, whose qualifications are a matter of record with the Federal Communications Commission.

  
Olvie E. Sisk

November 1, 1995



Stitch Ch

Mansfield

Panther

EXHIBIT A

PLEASANT

MANSFIELD QUADRANGLE

TENNESSEE

7.5 MINUTE SERIES (TOPOGRAPHIC) 9-NE

Broach Cem

Bear

Drainage

Caney

Creek

FENRICO  
CARROLL CO

SCALE 1:24 000

CONTOUR INTERVAL 10 FEET  
NATIONAL GEODETIC VERTICAL DATUM OF 1929

ROAD CLASSIFICATION

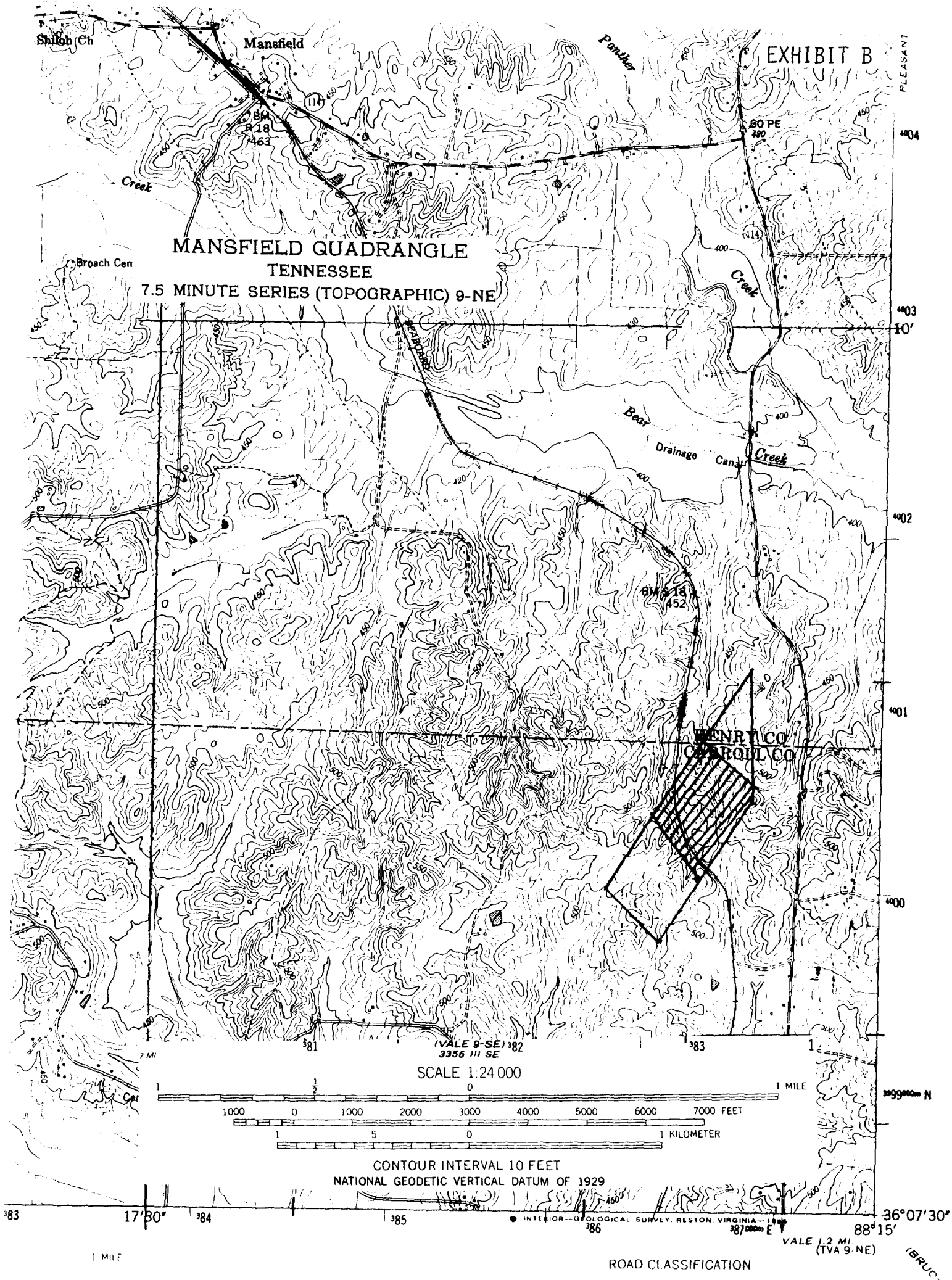
36°07'30"

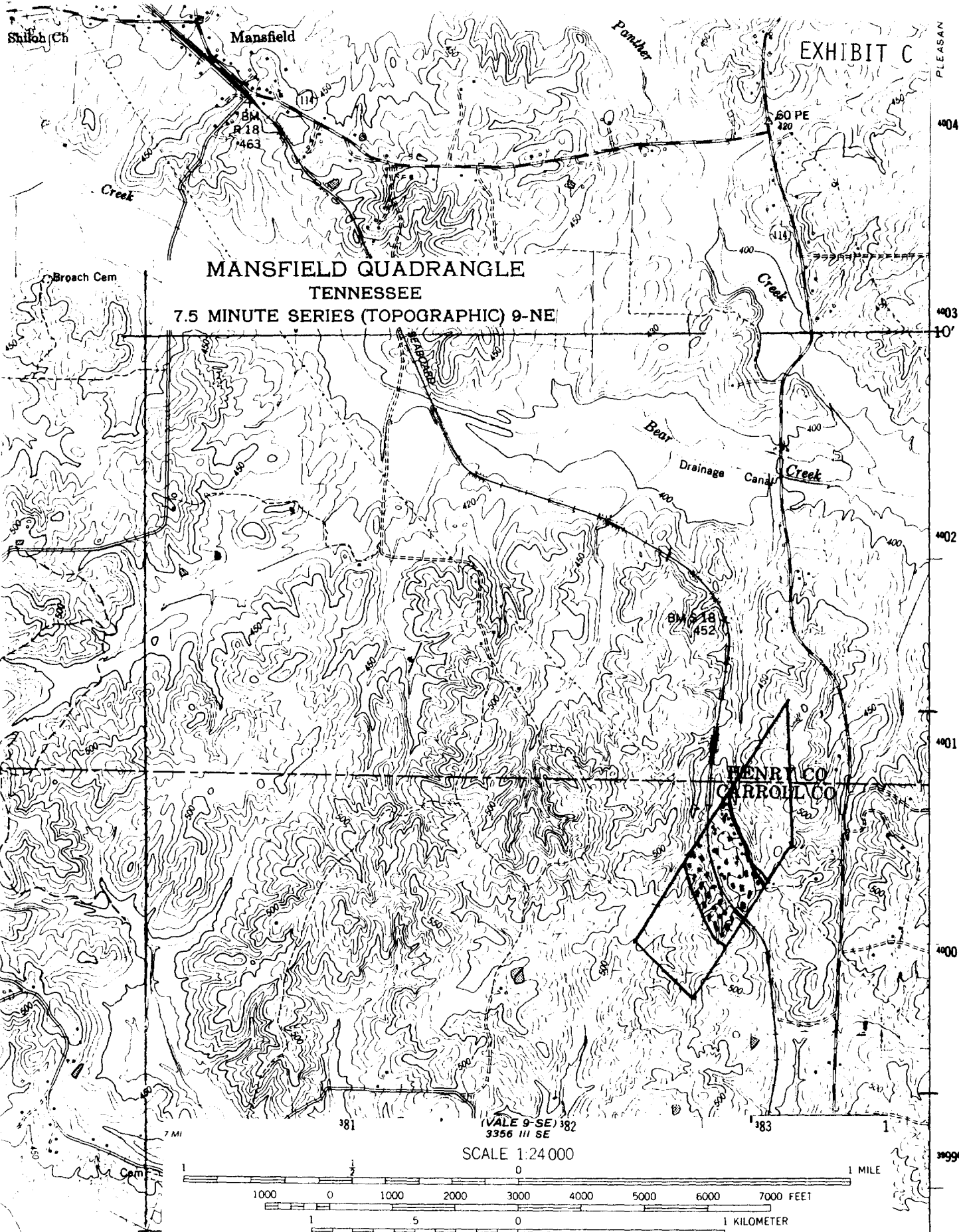
88°15'

VALE (TVA 9-NE)

INTERIOR-GEOLOGICAL SURVEY, RESTON, VIRGINIA-1980

1 MILE





1 MILE

ROAD CLASSIFICATION

(BRUC)



Shiloh Ch

Mansfield

EXHIBIT D

PLEASANT

Creek

Broach Cam

MANSFIELD QUADRANGLE  
TENNESSEE  
7.5 MINUTE SERIES (TOPOGRAPHIC) 9-NE

Ponther

60 PE  
220

4004

4003

4002

4001

4000

3599000 N

36°07'30"

88°15'

VALE (2 MI. TVA 9-NE)

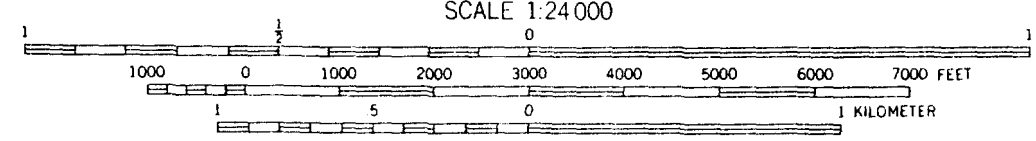
(BRUC)

AREA B

AREA A

HENRY CO  
CARROLL CO

SCALE 1:24 000



CONTOUR INTERVAL 10 FEET  
NATIONAL GEODETIC VERTICAL DATUM OF 1929

INTERIOR-GEOLOGICAL SURVEY, RESTON, VIRGINIA-1966

ROAD CLASSIFICATION

1 MILE

# EXHIBIT E

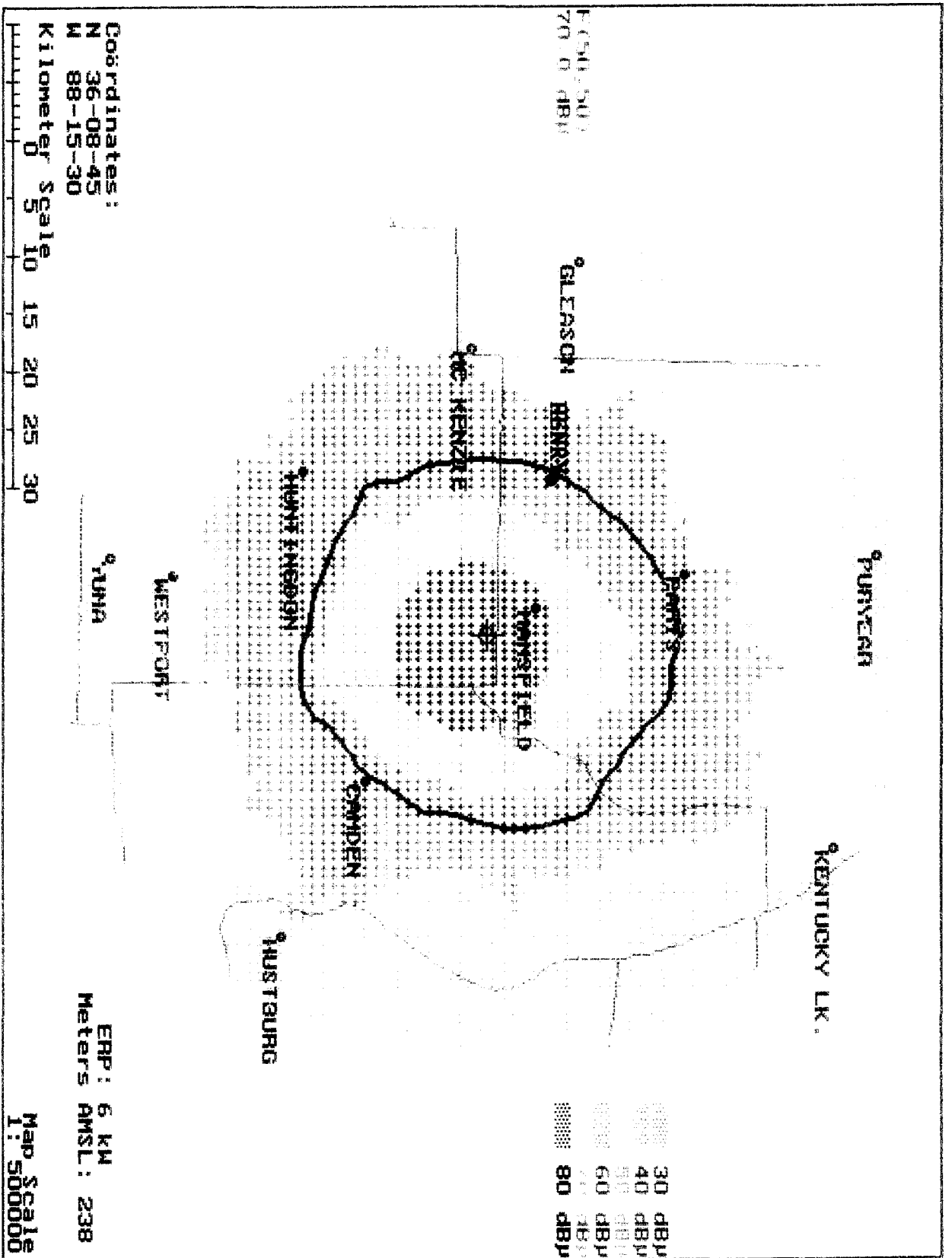
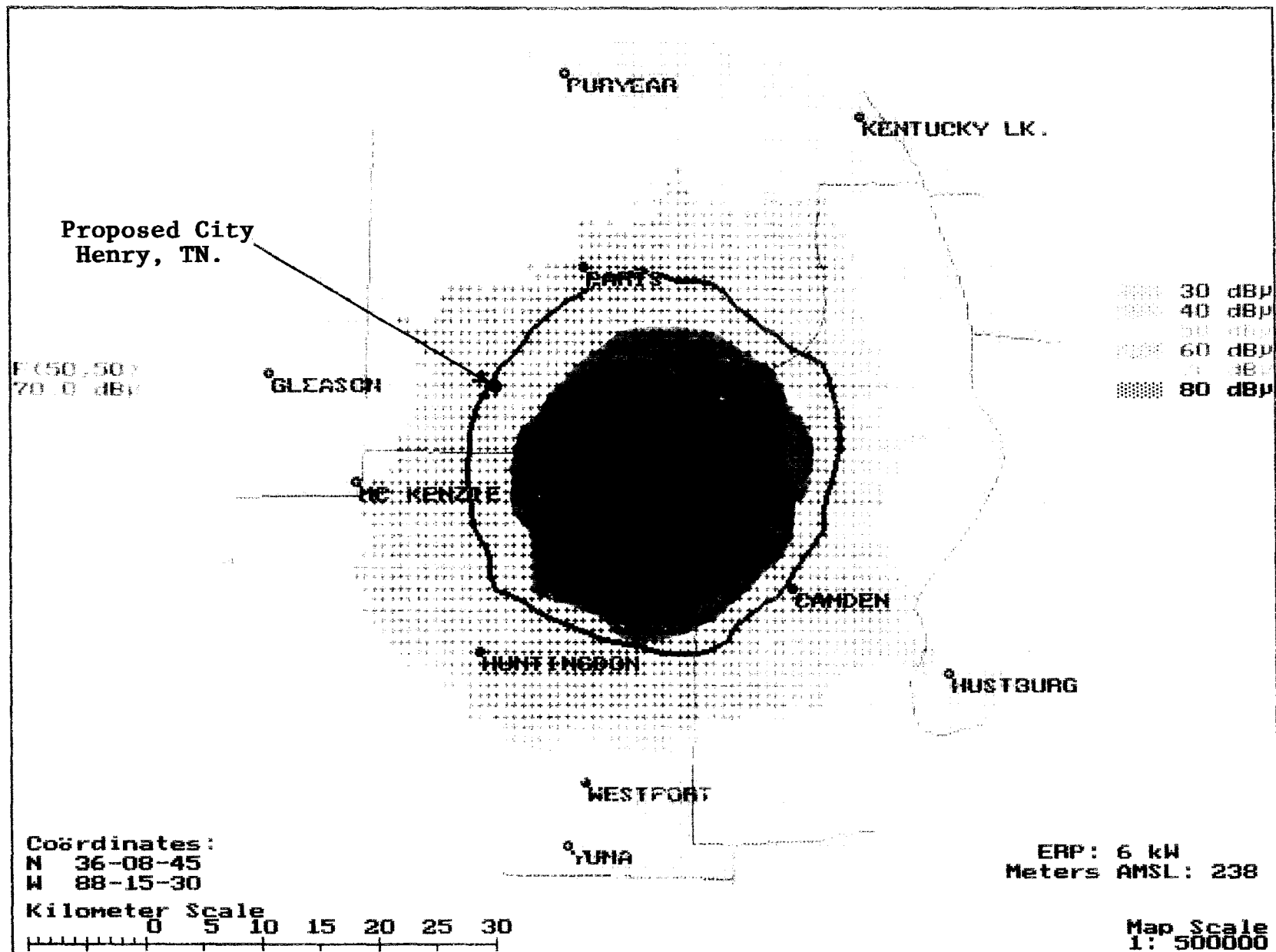


EXHIBIT F

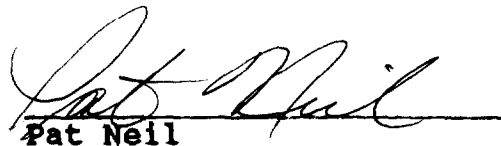


CERTIFICATE OF SERVICE

I, Pat Neil, hereby certify that I have, this 2nd day of November, 1995, served a copy of the foregoing Further Reply Comments by First Class mail, postage prepaid upon the following:

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Pat Neil